U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17946514

Date: AUG. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a weightlifter, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as an individual of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

In his initial cover letter, the Petitioner claimed that he "intends to continue working in his area of expertise, which will serve the national interest of the United States by improving athletics, in particular weightlifting and will substantially benefit the United States on the national level." He also submitted a personal statement that discussed his personal accomplishments but made no mention of his proposed endeavor.

In response to the Director's request for evidence (RFE), the Petitioner claimed that he "seeks employment in the field of weightlifting and exercise science." In addition, the Petitioner submitted a business plan for [redacted] "[t]o remove physical activity barrier training for older adults!" and "[t]o provide an evidence-based training program to the older adults!" located in [redacted] Pennsylvania. He also provided supporting evidence for the business, such an operating agreement, business certification, federal employer identification number, bank statement, website registration, training plan, and business cards.

On appeal, the Petitioner claims:

> [He] seeks employment in the field of weightlifting and exercise science. Weightlifting is a sport that is practiced worldwide. It was contested at the first modern Olympic Games in 1896 and has been included in every edition of the summer Olympics held since 1972. Weightlifting's popularity is growing rapidly in the U.S. [The Petitioner] intends to use his vast expertise as an athlete and coach to train, mentor and support US athletes who desire to achieve great results in the sport of weightlifting. Their victories

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

> will raise prestige of the US on the international arena and increase competitiveness of the country in this sport.
>
> The evidence in the record clearly establishing that the [the Petitioner's] proposed endeavor will have potential national importance. The [Petitioner] has established that he is capable to win major competitions in weightlifting in the US and to train athletes to win major competitions in this sport and that his students have in fact competed in and won such competitions in the US. The benefit resulting from winning such competitions clearly will help increase the U.S. Weightlifting teams competitiveness, even if he will not be working with a U.S. Weightlifting team, simply by motivating U.S. Weightlifting team athletes to outperform the [the Petitioner]. As the [Petitioner] is willing to coach other athletes, he will be sharing his expertise with those who aspire to complete with him and thus will improve their skills.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner did not provide a specific proposed endeavor in accordance with the *Dhanasar* precedent decision. Rather, the Petitioner broadly claimed his intent to continue working in his area of expertise. Moreover, the Petitioner made no mention of creating and operating a weightlifting and exercise business for older adults in the [redacted] In fact, all of the documents, including his business plan, relate to events occurring after the issuance of the Director's RFE. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Moreover, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of operating a weightlifting or exercise business for older adults.

On appeal, the Petitioner does not mention [redacted] or refer to training older adults. Instead, the Petitioner generally asserts that he will "train, mentor and support US athletes" and "train athletes to win major competitions." However, the Petitioner did not initially claim his intention to work in weightlifting as a coach, trainer, mentor, or supporter of U.S. athletes. Eligibility must be established at time of filing. *See* 8 C.F.R. § 103.2(b)(1). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Izummi*, 22 I&N Dec. at 175; see also *Bardouille*, 18 I&N Dec. at 114. Again, the Petitioner initially indicated his broad intent to continue working in his field.

In light of the Director determining that the Petitioner established the substantial merit of his proposed endeavor, we will withdraw that conclusion. Because the Petitioner did not provide a specific proposed endeavor, he did not demonstrate its substantial merit and did not show eligibility at time of filing. Moreover, the Director did not explain his determination, nor did he reference any documentation in the record to form his conclusion. Furthermore, the Petitioner did not establish how simply intending to work in one's field reflects its substantial merit.

Likewise, because the Petitioner did not provide a specific proposed endeavor, he did not establish its national importance. Moreover, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his "inten[t] to continue working in his area of expertise" rather than the national importance of weightlifting or exercise. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner refers to his "vast expertise as an athlete and coach." The Petitioner's experience, skills, and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. However, the Petitioner has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Even if we considered his business in the RFE response or his coaching, training, mentoring, or supporting of U.S. athletes on appeal, the Petitioner did not show that such services stand to sufficiently extend beyond his potential or futuristic clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's weightlifting work would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the reasons discussed above, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a

matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.